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GIGANEWS, INC. and LIVEWIRE SERVICES, INC.
14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 GIGANEWS, INC., a Texas corporation;
and LIVEWIRE SERVICES, INC., a
19 Nevada corporation,

20 Plaintiffs,

21 v.

22 PERFECT 10, INC., a California
corporation; NORMAN ZADA, an
23 individual; and DOES 1-50, inclusive,

24 Defendants.
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Case No.: 2:17-cv-05075-AB (JPR)

**PLAINTIFFS' OPPOSITION TO
REQUEST FOR JUDICIAL
NOTICE OF DEFENDANTS
PERFECT 10, INC. AND
NORMAN ZADA**

Date: October 20, 2017
Time: 10:00 a.m.
Dept: 7B
Judge: Hon. André Birotte

1 Plaintiffs oppose Defendants' request for judicial notice on the following
2 grounds:

3 The Ninth Circuit has made clear that a Court may take judicial notice of the
4 existence of court records but not the truth of the facts recited therein. *Lee v. City*
5 *of L.A.*, 250 F.3d 668, 690 (9th Cir. 2001). In *Lee*, the Ninth Circuit held that the
6 district court had improperly considered extrinsic evidence when granting a Rule
7 12(b)(6) motion to dismiss because it had improperly taken notice of the truth of
8 factual allegations that were outside the operative complaint. *Id.*; *see also*
9 *Cummings v. Borges*, CV 10-8726-GAF JEM, 2012 WL 4022682, at *3 (C.D. Cal.
10 July 9, 2012) ("On a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the
11 Court must limit its review to the operative complaint and may not consider facts
12 presented in briefs or extrinsic evidence."), *report and recommendation adopted*,
13 CV 10-8726-GAF JEM, 2012 WL 3619354 (C.D. Cal. Aug. 21, 2012); *Abner v.*
14 *Compton Unified Sch. Dist.*, CV 10-1517-DMG PLA, 2010 WL 3244746, at *3-4
15 (C.D. Cal. June 8, 2010) (a "declaration by a party is not a matter appropriate for
16 judicial notice in that it clearly is subject to dispute, the 'facts' are not generally
17 known, and it is not from a source whose accuracy cannot reasonably be
18 questioned"), *report and recommendation adopted*, CV 10-1517-DMG PLA, 2010
19 WL 3245098 (C.D. Cal. Aug. 12, 2010).

20 Defendants improperly direct this Court to take notice of the truth of specific
21 factual assertions made in their own testimony and pleadings given in past
22 litigation. Whether or not the Court takes notice of the fact of their occurrence or
23 filing, it cannot accept as true the *fact assertions they contain* in ruling on a
24 12(b)(6) motion. *See Lee*, 250 F.3d at 690. Plaintiffs therefore respectfully request
25 that the Court deny the request for judicial notice to the extent that Defendants seek
26 notice of the truth of any matter submitted in the pleadings to be noticed.

1 Dated: September 29, 2017

FENWICK & WEST LLP

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3 By: /s/Andrew P. Bridges

4 Andrew P. Bridges

5 Attorneys for Plaintiffs/Judgment Creditors,
6 GIGANEWS, INC., and LIVEWIRE
7 SERVICES, INC.
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